IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 801 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAJIBHAI KHUSALBHAI DHOLIYA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 801 of 1997

MR KG SHETH for appellant

MS HANSA B PUNANI APP for Respondent

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE H.H.MEHTA

Date of decision: 18/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

The appellant by filing this appeal under Section 374 of the Code of Criminal Procedure (to be referred to as "the Code " for short) has challenged the judgment and order dated August 8, 1997, passed by the learned Addl. Sessions Judge, Surat, Camp at Vyara in Sessions Case No.284/95, by which the appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code (to be referred to as "IPC" for short) and sentenced to undergo RI for life and fine of Rs.3,000/-, in default, SI for six months.

2. The prosecution case in brief is as under :-

The appellant was residing in village Butvada, Tal. Mahuva along with his family, which consisted of his wife and two sons Shailesh and Haresh. On June 16, 1995, the appellant's wife Premilaben was found in bleeding condition below the mango three which was situated near the house of the appellant. PW 3-Shaileshbhai asked the appellant that what happened to his mother, the appellant replied that he had beaten his wife. The reason for beating given by the appellant to PW 3 was that she had not prepared good meal, and therefore, he had inflicted blows with a pastel having iron head on her body. A jeepcar was called from village Valvada and the wife of the appellant was removed to Government Hospital, Mahuva. Rameshbhai Maganbhai, Chandrakantbhai Naginbhai, Chandubhai Navalbhai and Suresh Amrutbhai had accompanied the injured Premilaben in the jeepcar to the Government Hospital, Mahuva. The doctor, who examined Premilaben had declared her dead. PW 3-Shaileshbhai had lodged the complaint against the appellant at Mahuva Police Station for the offence punishable under Section 302 of IPC, which was registered as C.R. No. I 30/95. P.S.I. D.G.Chaudhary of Mahuva Police Station was entrusted with the investigation of the above crime. The inquest of the dead body of the deceased Premilaben was held and the dead body was sent to Primary Health Center, Mahuva for postmortem. PW 1-Dr. Kiranbhai Premchandbhai had performed the postmortem. P.S.I. D.G.Chaudhary had visited the place of the incident and had collected the blood stained earth by drawing the panchnama. At the time of drawing of the panchnama of the place of the incident, muddamal article No.4-pastel stained with blood was also recovered. After the postmortem was completed, blood stained clothes of the deceased Premilaben were seized under a panchnama. The Investigating Officer had sent the blood stained clothes, control earth, blood stained earth and

bloodstained pastel to the Forensic Science Laboratory (to be referred to as " F.S.L." for short). P.S.I. D.G. Chaudhary was transferred from Mahuva Police Station and, therefore, further investigation was handed over to P.S.I. I.K.Desai. P.S.I. I.K.Desai after completing the investigation and on the receipt of the report of F.S.L. had filed charge sheet against the appellant in the Court of learned Judicial Magistrate, First Class, Mahuva for the offence punishable under Section 302 of the IPC. The said charge sheet was registered as Criminal Case No.4296/95. As the offence under Section 302 is exclusively triable by the Court of sessions, the learned Judicial Magistrate, First Class, Mahuva committed the case to the Court of Sessions wherein it came to be numbered as Sessions Case No.284/95.

3. The charge Exh.3 was framed against the appellant for the offence under Section 302 of IPC. The charge was read over and explained to the appellant wherein he pleaded not guilty and claimed to be tried.

4. In order to prove the charge against the appellant, the prosecution had examined :-

(i) PW 1-Dr. Kiranbhai Premchandbhai Prajapati at Exh.8,

(ii) PW 2-Gamanbhai Kaliyabhai Gamit at Exh.10,

(iii) PW 3- Shaileshbhai Dajibhai Patel at Exh.12,

(iv) PW 4-Arvindbhai Bhagubhai Patel at Exh.14,

(v) PW 5-Niruben Vajirbhai Patel at Exh.15,

(vi) PW 6-Rameshbhai Maganbhai Patel at Exh.16 and

(vii) PW 7- Investigating Officer, P.S.I. Dalsingbhai Govindbhai Chaudhary at Exh.22.

5. The prosecution produced documentary evidence such as postmortem notes at Exh.9, panchnama of the place of the offence at Exh.11, complaint at Exh.13, panchnama of seizure of clothes of the deceased at Exh.19, arrest panchnama at Exh.20 and F.S.L. report at Exh.21.

6. After recording of the evidence of the prosecution was over, the appellant was questioned with regard to the evidence led against him and his statement came to be recorded under Section 313 of the code. The defence of the appellant was of general denial. In the

further statement, the appellant stated that on the day of the incident, he had gone to Valsad and had returned around 1-00 p.m. When he returned to his house, he saw his wife Premilaben lying under a mango tree. He stated that thereafter, he had gone inside the house. That the persons staying in the neighbourhood had tied him with rope and had beaten him with stone, belt and by giving fist blows and due to beating by the persons residing in his neighbourhood, he had become unconscious. He stated that thereafter, the police personnel from Mahuva came and had arrested him. He had stated that he did not know about the incident.

7. The learned Addl. Sessions Judge on appreciation of oral as well as documentary evidence and after hearing the arguments of the respective advocates of the parties held that the deceased Premilaben had died a homicidal death on June 16, 1995. It was held that on June 16, 1995, at 11-00 a.m. in village Butvada, the appellant had inflicted blows with pastel having iron head on the head as well as on the right hand of the deceased Premilaben with an intention to cause her death and thereby had committed the offence under Section 302 of the IPC. On the basis of above referred to conclusions, the appellant came to be convicted for the offence punishable under Sections 302 of IPC and was sentenced to undergo RI for life and fine of Rs.3,000/, in default, SI for six months, which has given rise to filing of this appeal.

9. Learned advocate Mr K.G.Sheth for the appellant and learned A.P.P. Ms. Hansa. B. Punani have taken us through the entire record and proceeding. We have minutely scanned through the entire oral as well as documentary evidence with a view to re-appreciate the evidence and to arrive at a just conclusion.

8. Learned counsel for the appellant has submitted that the prosecution has not examined independent witnesses to prove that the appellant had committed the murder of the deceased Premilaben. It is submitted that on the day of the incident, the appellant had gone to Valsad and was not present when the incident had taken place. Counsel for the appellant submitted that the evidence of PW 5, who is alleged to have seen the occurrence of the incident is highly interested witness and the trial Court erred in placing reliance on the said evidence, and therefore, benefit of doubt should be given to the appellant and the appeal be allowed and the conviction and sentence be quashed and set aside.

9. Learned A.P.P. Ms. Hansa. B. Punani has supported the finding of the learned Addl. Sessions Judge and submitted that cogent and convincing reasons have been assigned by the learned Addl. Sessions Judge in holding the appellant guilty of the offence punishable under Section 302 of the IPC and therefore, the appeal be dismissed.

10. The finding of the learned Addl. Sessions Judge that the deceased Premilaben had died a homicidal death deserves to be confirmed. The evidence of PW 1 Dr. Kiranbhai Premchandbhai and the postmortem notes Exh.9 had proved beyond doubt that Premilaben had died a homicidal death due to the injuries sustained by her on the head. Dr. Kiranbhai had deposed that the injuries found on the body of the deceased were possible by infliction of a blow by muddamal article NO.4-pastel having iron head. Dr. Kiranbhai had further deposed that the injuries sustained by the deceased on her head were sufficient in the ordinary course of nature to cause the death. In the p.m. report in column No.23, the cause of death mentioned as cardio respiratory failure due to the head injury, fracture of humerus of left side. Therefore, we have no hesitation in holding that the oral testimony of Dr. Kiranbhai Premchandbhai and p.m. notes had proved that the deceased Premilaben died a homicidal death on June 16, 1995.

11. PW 5-Niruben Vajirbhai Patel had deposed that she was residing in the neighbourhood of the appellant. She deposed that the incident had taken place around 11-45 a.m. She stated that at that time, she was present in her house and was fetching water from the well situated in the backyard of her house. She deposed that she had heard the cries of Premilaben and she saw that the appellant was beating Premilaben and was inflicting blows on her head and hand by the pastel having iron head. After witnessing the incident she had raised shouts and called PW 4-Arvindbhai Bhagubhai and PW 6-Rameshbhai Maganbhai. She deposed that PW 4-Arvindbhai and PW 6-Rameshbhai along with other persons had gathered in the house of the appellant. Premilaben was seriously injured and therefore, she was removed in a jeep to Government Hospital, Mahuva. PW 5-Niruben deposed that she came to know that as the deceased was in her menstruation period, the meal was prepared by one Sarojben. That when the appellant was taking meal, he did not like it and therefore, he had beaten Premilaben by inflicting blows with the pastel having iron head. The oral testimony of PW 5-Niruben was not dislodged during her

cross-examination. We find that PW 5 is a reliable and trustworthy witness, who had witnessed the occurrence of the incident wherein the appellant had inflicted blows with the pastel on the vital part of the body of the deceased Premilaben which had ultimately caused her death.

12. The evidence of PW 5-Niruben also gets support from the oral testimony of PW 4-Arvindbhai Bhagubhai Patel and PW 6-Rameshbhai Maganbhai Patel who were residing in the neighbourhood of the appellant and who had come to the place of the incident on hearing shouts of PW 5-Niruben. Both the witnesses namely PW 4 and PW 6 had accompanied the deceased in a jeepcar to the Government Hospital at Mahuva.

13. PW 3-Shaileshbhai Dajibhai Patel, son of the appellant, had deposed that on the day of the incident, he had gone to the Patrol Pump to fill patrol in his motorcycle and had returned around 1-30 p.m. He deposed that on his return, he found that his mother Premilaben was crying because of the injuries on her head and blood was oozing out of the injuries and she was lying under a mango tree. He deposed that at that time the appellant was present in the house. PW 3-Shaileshbhai Dajibhai Patel had inquired from the appellant the reason for beating his mother-Premilaben. He had deposed that Premilaben was removed to Mahuva Government Hospital in jeepcar and thereafter, he had lodged the complaint before Mahuva Police Station against the appellant. The muddamal article No.4-pastel having iron head was recovered at the time of drawing of the panchnama of the scene of the incident i.e. from the house of the appellant. From the said house, blood stained earth was also seized. The blood stained clothes of the deceased recovered after the performance of the postmortem, the bloodstained pastel and bloodstained earth were sent to F.S.L. The report of the F.S.L. Exh.21 and more particularly the report of the Serologist had shown that the blood group of the deceased was "A" and on the muddamal-pastel, earth which was seized from the house of the appellant, human blood having blood group "A" was found. The finding of human blood of group "A" on the muddamal pastel, had corroborated the testimony of eye witness PW 5-Niruben had proved beyond doubt that the appellant had inflicted blows with pastel on the head of the deceased Premilaben. The appellant had selected vital part of the body of the deceased for infliction of the blows with the pastel and had acted cruelly while inflicting the blows on the head of the deceased. In our view, the evidence oral as well as documentary had proved

beyond doubt that the appellant had committed the murder of the deceased Premilaben on June 16, 1995 around 11-45 a.m. in his house situated at village Butvada.

14. As a result of the foregoing discussion, the appeal is dismissed. The conviction of the appellant under Section 302 of IPC and the sentence imposed on him to undergo RI for life and fine of Rs.3,000/-, in default, SI for six months, recorded by the learned Addl. Sessions Judge, Surat, Camp at Vyara in Sessions Case No.284/95 is hereby confirmed.

15. Muddamal be destroyed in terms of the directions contained in the impugned judgment.

(M.H.Kadri, J.) (H.H.Mehta, J.)

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